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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 001702

SIPDIS

DEPT PLEASE PASS TO E, EB, SA/INS, SA/RA, DRL
DEPT ALSO PLEASE PASS USAID FOR BERNADETTE BUNDY - ANE/SA
TREASURY FOR JERRY ADKINS
DOL FOR SUDHA HALEY
NSC FOR ELIZABETH MILLARD
DEPT PLEASE PASS USTR FOR AUSTR WILLIS
COMMERCE FOR ARIADNE BENAISSA

E.O. 12958: DECL: ONE YEAR AFTER CONCLUSION OF US-SL FTA
TAGS: [ETRD](#) [EAID](#) [ECON](#) [EFIN](#) [KIPR](#) [ELAB](#) [PREL](#) [CE](#) [ECONOMICS](#)
SUBJECT: LABOR AND IPR IMPLICATIONS OF POTENTIAL US-SRI
LANKA FTA

Ref: a) Colombo 1386, b) Colombo 772, c) Colombo 1673

[11.](#) (U) Classified by Amb. Jeffrey J. Lunstead for reasons
1.5 B and D.

[12.](#) (C) Summary: As the next round of TIFA talks
approach, Post will highlight bilateral trade issues to be
addressed in TIFA (and in FTA considerations), and provide
updated information. Topics of concern include government
procurement, investment, labor and IPR. This cable
addresses the latter two - labor, where the GSL's good
record is suffering because of mishandling one case, and
IPR, where a good law needs a good implementation plan.
Moving forward on an FTA (as outlined in Ref C) would give
us an opportunity to influence GSL actions and decisions on
these fronts in positive directions. End summary.

Labor

[13.](#) (SBU) Sri Lanka is justifiably proud of its labor
record. It has ratified all the relevant ILO Labor
Conventions, some of its labor conditions are "the best in
the world" according to a major US buyer, there is no child
labor in the formal sector, and the top tier buyers of Sri
Lankan goods demand compliance with high labor standards.
There are situations with lower standards, but overall, and
especially compared with the region, Sri Lanka is ahead of
the pack. Important labor issues fall into two categories
- enforcement of existing laws in Export Processing Zones
(EPZs), and labor law reform.

[14.](#) (SBU) The recent international attention given to
labor issues here is due to restricted union access to
factories in the EPZs. This was the basis for the
(ultimately not accepted) petition to USTR by AFL-CIO to
deny GSP privileges in 2002. It also is the basis for a
complaint filed in the Freedom of Association Committee at
the ILO, and, reportedly, a delay by the EU in granting
broader GSP privileges. Much of the problem stems from the
oversight responsibility of the Board of Investment (BoI)
in the EPZs. The labor laws are fairly strong, but
enforcement in the EPZs had been left to the BoI, rather
than the Ministry of Labor. Steps were not taken to allow
union access, or to address alleged intimidation and
repression of unions.

[15.](#) (C) There appears to be more involvement by the Labor
Ministry in recent months, but no broad changes to allow
union access. It seems that the GSL is trying to defuse
specific situations because of their negative impact on FTA
chances, rather than making the positive systemic changes
that would lead to stronger protection of labor rights in
the EPZs. Advisors admit the GSL has not responded well
and seems to remain in a reactive, defensive mode. Some
public, consultative steps would go a long way to show the
GSL understands the problem and plans to address it.

[16.](#) (SBU) The other main concern is some of the existing
labor laws, which the government has recognized are
antiquated and a hindrance to investment. The GSL has
delayed implementation of some amendments to these laws
that were passed by Parliament in January until a
compensation formula is decided and a social safety net is
in place, expected by year's end. These amendments will
allow for speedier resolution of labor cases, a standard
formula for separation benefits, and more realistic
overtime allowances. New amendments are proposed that
would expand allowed hours of operations and workmen's
compensation, and facilitate subcontracting. Establishment
of a responsive, fair system is needed. Such a system
should allow employers to know the cost of entry and exit,
should allow work hour flexibility, should leave the
decision on the number of employees to the employer, and
should speed up dispute resolution. A consultative process
and support for better management/labor relations also
would improve the situation greatly.

Intellectual Property Rights

17. (C) As reported (ref a), and encouraged in all previous bilateral trade discussions, Parliament recently passed strong IPR legislation, which should enter into force next month. Today, pirated goods are openly sold, even in government-owned outlets, and US companies have come to us with their concerns. While illegal production and sales do not reach the level of neighboring countries, the problem is growing. This is a critical time to put a structure in place before the problem gets out of control. The GSL has cited the flawed current law that is about to be replaced as a reason for inaction. The major concern now is the lack of an implementation plan to be initiated once the new law takes effect. Action must be multifaceted, including training of police, lawyers, judges, and customs personnel, public education, and high profile raids.

18. (C) We have convened an IPR Working Group with interested US companies and the Amcham. The GSL has agreed to meet with this group on a monthly basis, to begin next week. We plan to identify some specific problems, suggest next steps and offer assistance where possible. Commerce Minister Karunanayake has repeatedly requested that we establish a 'regional IPR policing unit' in Sri Lanka. We have told him the GSL needs to work on implementation at the national level first, before any grander scheme could be considered.

19. (C) Comment: While these areas need attention, the situation in Sri Lanka is significantly better than in other countries in the region. The desire for an FTA with the U.S. gives us the opportunity to lock in and strengthen the GSL's efforts on reform, making a stronger economy, and a stronger partner (Ref C). End comment.

LUNSTEAD